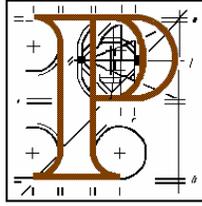


An Bord Pleanála



Inspector's Report

FILE REFERENCE: PL06F.232186

Location: Site at the end of Railway Avenue, Sutton, Dublin 13.

Proposed Development: Demolition of existing factory units and other associated buildings and construction of 82 no. residential units and all associated site works.

APPLICATION DETAILS:

Applicant: A & T Flood

Planning Authority: Fingal County Council

P.A. Reference: F08A/0373

P.A. Decision: Refuse Permission

APPEAL DETAILS:

Appeal Type: Third Party against Decision

Appellant: Peter Maxwell
M and D Spencer
A Brennan
M & S Hennessy
Railway Avenue Residents Action Group
Noel and Laura O'Connor

Date of Appeal: 22nd December, 2008

Observers: T.P Broughan TD
Cllr. C. O'Callaghan
T.Flanagan TD
M.Murtagh

INSPECTOR: Stephen Kay

Date of Site Inspection: 2nd April and 11th April, 2009

1.0 Site Location and Description

The appeal site is located at the eastern end of railway Avenue in Sutton, a cul de sac accessed off the Baldoyle Road. The site is roughly triangular in shape and is bounded to the north by the railway line to Howth and beyond that by residential properties on James McCormack Gardens, to the west by dwellings on railway Avenue and to the east by an adjoining site that is partially vacant and partially occupied by an industrial / commercial shed building and by an ESB sub station. These lands are also in the ownership of the applicant. Beyond this to the east the site is bounded by the pumping station for the Dublin Bay project. To the south east are open lands that comprise the playing pitches of Suttonians RFC.

To the south, the appeal site is bounded by an existing laneway that extends from the end of Railway Avenue at the western end of the site to a position c.60 metres to the east of the appeal site where it joins a laneway that connects with Binn Eadair Crescent to the south and with the curtilage of the Dublin Bay Scheme pumping station to the east of the site. From the pumping station site pedestrian access is available to the north east to join with Station Road to the south of the railway line. On the opposite side of Station Road to the entrance to the pumping station site is Sutton rail Station which is served by the DART service to Dublin city centre. The closest part of the appeal site is located less than 250 metres from the rail station.

The appeal site is currently occupied by a factory building which, the Planners Report and other submissions on file, indicates was previously used as a paint factory. In addition to the relatively modern industrial structure which occupies the bulk of the site, the north eastern corner of the site is occupied by a red brick industrial building which the application documentation indicates was originally used in connection with the operation / maintenance of the Howth Tram. This building is not included on the record of Protected Structures however it is proposed to be retained as part of the proposed development.

The appeal site has a stated area of 0.652 ha. and the floor area of the existing buildings on site is given as 3,986 sq. metres. None of the structures on site are currently occupied.

2.0 Description of the Proposed Development

The development proposed comprises the demolition of the two main existing factory units which are located on the site and a number of other smaller scale ancillary buildings having a stated total floor area of 3,800 sq. metres and the undertaking of development consisting of the following main elements:

- Modifications to an existing red brick building on site (formally known as the 'Engine House') and the incorporation of this structure into part of the residential development of the site, (Block D).

- The construction of new residential development on the site consisting of 82 no. residential units to be contained in three new blocks of 3, 5 and 8 storeys in height, (Blocks B, C and E).
- A new block (Block A) to contain a crèche with a stated floor area of 408 sq. metres.
- Parking is proposed at basement level with 133 no. parking spaces proposed and 105 no. cycle parking stands. An additional 5 no. parking spaces are proposed at surface level to serve the proposed crèche building.
- A new ESB sub station building is proposed.

The proposed mix of residential units comprises a total of:

- 5 no. 3 bedroom duplex units each with a floor area of c.100 sq metres,
- 9 no. 3 bedroom apartments with floors areas ranging between 96 and 175 sq. metres.
- 54 no. two bedroom apartments ranging between 78 and 97 sq. metres.
- 14 no. one bedroom units with a floor area of between 55 and 63 sq. metres.

3.0 Planning History

There is no reference in the Planners Report to any recent planning history relating to the appeal site.

It is noted that one of the Observers to the appeal (T.Broughan TD) makes reference to two previous applications on the appeal site. It would appear however that these permissions relate to sites to the west of the current appeal site on Railway Avenue and their details are as follows:

- Register Ref. No. F99A/0808 – Permission granted by the PA for the construction of a dormer bungalow on a site on Railway Avenue.
- Register Ref. No. F99A/1224 – Permission granted by the PA for the construction of a dormer bungalow on a site on Railway Ave.

It is noted that there is a recently determined application on the adjoining site to the east which is in the ownership / control of the first party as follows:

- Register Ref. F08A/1357; ABP Ref. PL06F.232951 – Outline permission was Refused by the Planning Authority for the construction of six storey residential development on a site to the east of the current appeal site. Permission was refused for 4 no. reasons relating to (1) contravention of the general industry zoning objective, (2) proximity to the Sutton pumping station, (3) visual intrusion and negative impact on residential amenity of adjacent properties, and (4) inadequate provision of public open space. An appeal against this decision was submitted to the Board on 4th March, 2009 and this appeal file accompanies this appeal.

4.0 The Planning Authority Decision

4.1 Internal Reports

Planners Report – Report notes the objections received and internal reports and specifically the concerns of the Transportation and Drainage Sections and the proximity of the blocks to a number of the surrounding dwellings particularly to the south. Further information is recommended initially and the Planning Officer is satisfied with regard to the amendments to the design and positioning of some of the blocks. A grant of permission in accordance with the Notification of Decision which issued is recommended.

Transportation Department – Further information requested relating primarily to parking including for existing residents of Railway Avenue. On submission of FI continuing concerns expressed with regard to the access route through Railway Avenue, congestion and satisfactory parking for existing residents and clarification requested.

Water Services Department – Further information required in relation to water supply foul and surface water drainage. Response submitted considered acceptable subject to conditions.

Conservation Officer – No objection in principle to the development however further information is requested regarding some anomalies in the drawings and details submitted and the possibility of retaining the Tank House.

4.2 External Referrals

Iarnrod Eireann – Planners Report states that Iarnrod Eireann had responded to state that they had no objection subject to conditions.

The Board referred the appeal to the **Rail Procurement Agency** for comment however no response was received.

4.3 Observers

A significant number of objections to the proposed development were received. The grounds of objection were essentially the same as the third party grounds of appeal and can be summarised as:

- Height, and impact of overlooking,
- Additional traffic congestion and parking,
- Site access,
- Impact on drainage and water supply,
- Loss of light and skyline,
- Loss of property values,
- Increased noise from railway.

4.4 Further Information and Clarification of FI

Prior to the issuing of a Notification of Decision, the Planning Authority requested further information and subsequently Clarification of FI in connection with the following issues:

- Revised foul drainage and surface water sewer layouts and details,
- Transportation issues including impact on railway Avenue parking, turning, set down and parking for the crèche, service vehicle and construction traffic access, parking in the site and on railway Avenue was the subject of a Clarification of FI request.
- Revisions to the drawings relating to the tramway buildings, the potential for keeping the Tank House building in situ.
- The submission of additional photomontages,
- The submission of a contiguous elevation showing the adjoining structures including adjacent telecommunications structures and the height of the chimney that once stood on the site (if known),
- The increase in set back of Block C from houses to the south,
- The submission of proposals to reduce the overlooking of block E (8 storey block),
- Reduction in the percentage of one bedroom units,
- The comments regarding the reflection of train noise.

Arising from these issues, a number of revisions to the proposed development were proposed by the applicant:

- It is proposed to retain the tank house building and to incorporate it into the development, (at the southern side of the site).
- The reduction in the overall height of Block E from 26.75 metres to 24.75 metres through design changes while retaining the 8 no. storeys and the same number and basic configuration of units.
- Revisions to Block C to ensure that floors 1-3 are not within 30 metres of dwellings to the south and levels above this at least 35 metres away.
- Revisions to the layout of Block E to attempt to minimise the potential overlooking of properties in the vicinity. Changes in the aspect and screening arrangements of the balconies. Reduction in the number of one bed units from 14 no. to 12 no. and increase by one in the number of two bedroom units.
- Report by AWN consulting regarding potential impact on train noise.
- The provision of three no. dedicated spaces for the dwellings on Railway Avenue to the west of the site, 9 no. general parking spaces for Railway Avenue dwellings and use of the 5 no. crèche spaces outside of crèche opening hours.

4.5 Fingal County Council issued a *Notification of Decision to Grant Permission* for the proposed development subject to 27 no. conditions, the most significant of which in the context of the current appeal may be summarised as follows:

- Condition No.2 requires that Block E be revised to be a maximum of 6 no. storeys in height.
- Condition No.5 requires compliance with a number of specific requirements of the Conservation Officer relating to minor discrepancies in a number of drawings and a full photographic record of all buildings for demolition.
- Condition No.7 requires the submission of details of landscaping including proposed play areas.
- Condition No.15 requires that the developer shall ascertain the requirements of CIE during construction and operation.

5.0 Grounds of Appeal

5.1 Third Party Appeals

A number of third party appeals against the *Notification of Decision to Grant Permission* issued by the Planning Authority have been received. The following is a summary of the main points raised in these appeal submissions:

Traffic, Parking and Access

- That the proposed development would result in excess volumes of traffic on Railway Avenue that would lead to congestion and danger for other road users. Railway Avenue is inadequate in width to cater for the volume of traffic likely to be generated.
- That the main entrance to the appeal site was originally from Station Road and this should be the entrance serving the proposed development. It is stated to be over 30 years since any form of access was via Railway Avenue and the paint factory building was served via Station Road.
- The additional traffic at the junction with the Baldoyle Road in the proximity of the level crossing will create a hazard. When the barrier is closed c.100 times a day the tailback of traffic means that traffic exiting railway Avenue and turning right cannot move.
- Inadequate car parking has been provided to cater for the development, in particular visitor parking (none proposed to serve the apartments) and parking to serve the crèche.
- That the provision of 1.5 spaces per residential unit in the development is not sufficient. Permissions granted on railway Avenue have stipulated that 2 no. off street parking spaces need to be provided.
- That residents will lose existing on street parking and that the character and safety of the road as a safe environment will be negatively impacted upon. Not all dwellings on Railway Avenue have off street parking available and the parking area at the eastern end of the Avenue is located in the existing turning area for emergency vehicles.
- That the UK Manual for Streets is not the appropriate document for assessment and the access road should comply with DB32 which requires that a development of over 50 dwellings would be served by a minimum carriageway width of 5.5 metres.

- That the HSE care facility run from one of the houses on Railway Avenue generates additional traffic.
- That the traffic survey submitted is insufficient as it is based on a single days survey results at a time when the schools were closed. The traffic survey omits traffic from the crèche and appears to underestimate the additional traffic exiting Railway Avenue that would wish to turn right.
- That the crèche will generate significant traffic from outside of the development.
- That construction traffic will not fit onto Railway Avenue past any parked cars and the volume of construction traffic proposed cannot be accommodated.

Scale, Design and Visual Impact

- The scale and nature of development would be completely out of context and character with existing surrounding residential areas.
- That the scale of development proposed is not supported by national or local planning policy. The Sustainable Residential Guidelines promote increased densities however no specific density is stated and residential amenity and local character has to be protected.
- Scale should be restricted so that the 'Engine House' building is the tallest building and the focal point of the development.
- That the proposed development fails on the design criteria set out in the Residential and the accompanying Design Manual.
- That the high scale of development proposed would compromise general protected views and prospects in the area, e.g. from Baldoyle, Howth and Portmarnock.
- That the relationship of the development to the railway line is unsatisfactory in terms of residential amenity potential health effects and the consent of Iarnrod Eireann has not clearly been demonstrated.
- That the density proposed at c.145 units per hectare is approximately 8 times that prevailing in the vicinity.
- That the Board has refused permission previously for less dense developments.
- That inadequate open space is proposed. Based on c.200 bedspaces, there is a requirement for between 2400 and 3000 sq. metres of private open space which has not been achieved. The minimum standards of public space require c.8,000 sq metres of public space and less than 1,000 sq. metres has been provided.
- That there is no confirmation that the applicant has legal interest in Railway Avenue (shown within red line boundary) or the lands adjoining the railway line.
- That there is a right of way through the site that originally was adjoining the railway line and was subsequently moved to the southern boundary of the site.

Impact on Residential Amenity

- The development would have a significant negative impact on the residential amenity of the area in terms of overlooking and overshadowing of adjacent properties.

Other Issues

- That the development would land lock areas of lands to the east.
- That the development may impact negatively on the operation of the sewage pumping station and specifically the ventilation of the plant and the production of odours.
- Negative impact on the already poor water pressure in the area.
- That there are a significant number of unoccupied residential units already in the vicinity of the appeal site including '*The Coast*', '*Belmayne*' and developments in Balgriffin and Clongriffin.
- That the development will result in a significant reduction in property values in the area.

5.2 First Party

The first party submitted an appeal against conditions however this was returned as invalid and does not form part of the current appeal.

6.0 Observers to Appeal

Four observations have been received, including a number from local elected representatives. The main issues raised in these observations are largely a repeat of those set out in the third party grounds of appeal and can be summarised as follows:

- That the development would be contrary to the residential zoning objective which seeks to 'protect and improve' residential amenities. This development appears to do the opposite.
- That some of the buildings on the site do have architectural and historic merit and the site would be a good location for a transport museum.
- That the offer of parking spaces within the development to existing local residents would have liability and financial (management fee) implications.
- That no BER certificate has been submitted and that the application is therefore invalid.
- That apartment form of developments have been the subject of inadequate maintenance, fire safety provisions and general supervision in the city with inadequate maintenance companies.
- That the existing public transportation network is unable to cope with the demand and the proposed development will exacerbate this.
- That there would be a negative impact on the Baldoyle Estuary which is a SAC.

- That the site is essentially a buffer area linking three areas with habitat protection, namely Baldoyle Bay, the Howth SAAO and the Bull Island SAAO.
- That references to the Sustainable Development Guidelines and other policy documents which purport to promote increased densities have been overtaken by economic events and the number of uncompleted or unoccupied residential units in the area.
- That comparisons in terms of densities with Mount St Anne's development and North Fringe are inappropriate. Developments in north fringe area and areas to the north of the site have made arguments regarding countering population decline incorrect.
- That the reduction in height to six storeys will not resolve the basic concerns regarding overlooking and loss of residential amenity and character. Condition No.2 requiring a height reduction in contradictory and ill thought out.
- That the shadow analysis submitted is basic and inadequate.
- The set back distances proposed are totally inadequate.
- That the upper floors of Block E will be visible for long distances and the visual / photomontage analysis submitted is inadequate.
- That given the critical importance of the pumping station on the adjoining lands and the potential for problems at this location high density residential development should not be considered in the vicinity of the site and no basement element permitted.
- That the low lying nature of lands in the vicinity of the site mean that high density development should not be permitted so close to the coast.
- There are no proposals as to how the site might be contaminated and possible remedial measures.

7.0 Response Submissions

7.1 First Party Response to Grounds of Appeal

The following points raised in the first party response are considered to be of particular relevance:

General

- That the proposed use are consistent with the residential Objective RS land use zoning objective.
- That the adjoining lands were the subject of an application for outline permission for residential development (subsequently refused by the PA) and it is envisaged they will be developed in due course.
- That the fact that there are other residential locations in the general area where there are unoccupied units is not considered of relevance to the determination of the appeal in relation to this high quality, conveniently located development.
- That in terms of property values the development of the site and resultant reduction / elimination of potential for anti social behaviour would have a positive impact on the values and residential amenity of adjacent dwellings.

Scale and Form of Development

- That the proposed development is a medium to high density development on a brownfield site that is accessible to public transport (DART and bus).
- The scale of development proposed reflects the nature of the site which traditionally accommodated large buildings and that the quantum of development is in keeping with the height of the existing warehousing but with a lower plot ratio.
- That the development reflects the character of the site and environs which contains large industrial buildings and an adjoining 16 metre high pumping station, telecommunications masts and previously contained a 36 metre chimney. As a result this location is ideally suited for taller development.
- That the development has been limited in height to ensure that it is not visually dominant and the design has been amended to minimise any impacts on residential amenity.
- That the proposed development is not high rise but rather are medium sized apartment blocks.
- Photomontages submitted clearly indicate the visual impact arising as not being of undue significance.
- That the required balance between new development and protection of existing amenities has been met.
- That the design incorporating staggered building heights meets the requirements of the Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities.
- That national policy supports higher density development being located in proximity to existing public transport.
- That apartments are required in this area in order to provide a balance of accommodation types.
- That the proposed development, arising from its height and visual impact, would not impact on any area of scientific interest.
- That there is no basis for the concerns expressed regarding proximity to the pumping station and the operators of the station have not raised any objection.
- That as a result of set back distances and the design and layout of development including balconies and windows, there will not be an undue impact on adjoining developments by way of overlooking, overshadowing and visual obtrusion.
- That the proposed development, as is the case with the existing buildings, will result in some degree of overshadowing of properties to the west, north and north east at certain times of the year / day. Additional overshadowing will not be significant.
- That the 50 units per ha. standard referred to in planning guidance is an indicative figure to encourage higher density in appropriate locations and is not a maximum.
- That the site area is greater than 0.5 ha. and proximate to public transportation corridors and therefore as stated in the RPGs can set its own density to some extent and is appropriate for increased densities (greater than 50 units per ha.).

- That the Sustainable Density Guidelines do not specify a density for such sites and that a balance has to be struck between the protection of established character and the need for infill development.
- That the examples cited by the appellants relating to other infill sites in the area are not relevant to the current appeal site and are more significant breaches of the residential zoning objective.
- That development is consistent with the provisions of the NSS in particular integration of land use and transport and the promotion of infill residential development and densification at appropriate locations. The proposed development is consistent with the tests set out in the NSS regarding carrying capacity, transport, economic development, character, community and integration.
- That the development is consistent with the criteria for higher density residential development as set out in section 5.2 of the Guidelines.

Transport / Access

- That the fact that public transport is currently well used is a reason to encourage further development and increased service provision.
- That the site is in a built up area and there is no planning basis to restrict development in principle for traffic reasons.
- That the development was the subject of agreement between the applicants and the Transportation Department of the council.
- That a Road safety Audit was undertaken which suggests that the scheme will improve road safety.
- That the development provides adequate parking and that DTO policy is now to seek minimum car parking standards.
- That the proposed development is located in a location with high quality pedestrian, cycle and public transportation links. There is no evidence that existing public transport connections are over capacity as contended.
- That the most recent use of the site, c.10 years ago would have resulted in HGV and employee traffic on Railway Avenue and would have had a more significant negative impact for residents than the current proposal.
- A number of properties on the Avenue were constructed at a time when the site was still in industrial use and used as an access route.
- That the historical use of the site as an industrial / railway site would have resulted in significant traffic generation. The proposed development would ensure that industrial use will not be used in the future.
- That the proposed development would undoubtedly generate some additional traffic however the location is appropriate for infill residential development and is consistent with national and local policy.
- That dedicated parking will be provided for 3 no. residents of Railway Avenue that do not have off street parking spaces.
- That alternative access points were examined but considered not to be feasible and this view was agreed with by Fingal County Council. Dublin City Council were consulted regarding access through the pumping station lands but were not supportive.
- That a traffic survey was undertaken from which the traffic survey was based. It should be noted that the modal split figures used are likely to understate public transport usage as the site is very close to DART.

- That no vehicles turned right when exiting Railway Avenue at the peak hour so the impact of queuing at the junction as a result of the railway crossing is not considered to be significant.

Open Space

- That development contributions would be paid towards the provision of open space in the area. The development does not therefore constitute a material contravention of the development plan as contended.

Other Issues

- That concerns regarding the operation of management companies and maintenance of buildings are not directly relevant to the appeal.
- That comments regarding the type of persons residing in apartment are inappropriate and not relevant to the decision at hand.
- That details regarding services layout was submitted to and agreed with Fingal and concerns regarding water pressure should not be an issue. The requirements of Condition No.4 relating to water supply should also be noted.
- That the development has been designed to be conscious of the sites historic importance and the applicant liaised closely with the Conservation officer of the Council. As a result the Power house building is proposed to be incorporated into the development.
- That there is no specified set back distance for development from pumping stations.
- That contrary to the assertions of the appellants, the physical and social infrastructure in the area is not close to capacity. The development of apartment units would assist in retaining existing services in the area.

7.2 Planning Authority Response to Grounds of Appeal.

Fingal County Council responded to state that:

- The development is in accordance with national policy specifically the *Residential Density Guidelines, 1999* (in force at the date of decision) and the Fingal Development Plan.
- That additional public transportation capacity can be provided in this area.
- That there has been a significant population decline between 2002 and 2006 such that the traffic issues in the area are not as significant as previously the case.
- That heights are not significantly greater than existing structures in the area.

7.3 Third Party Response to other Third Party Submission

A response was received on behalf of the Railway Avenue Residents Action Group giving their support to the other third party appeals submitted. No specific additional comments relating to these appeal submissions were cited.

8.0 Planning Policy

8.1 County Development Plan

The relevant document is the Fingal County Development Plan 2005-2011. The site is zoned Objective 'RS' – '*To provide for residential development and to protect and improve residential amenity.*'

The stated vision for this zoning objective is '*to ensure that any new development in existing areas would have a minimal impact on existing residential amenity.*'

The lands to the east of the appeal site which are in the ownership / control of the first party are zoned objective GI (General Industry).

Strategy RS1 states that the council will seek to '*identify opportunities for infill development and consolidation of existing towns to reduce the need to zone additional greenfield lands.*'

Strategy RS2 seeks to '*develop an appropriate mix of good quality well-designed residential types and sizes and varying densities.....*'

Policy UP20 seeks the promotion, in an integrated and planned manner, the optimal development and future use of development sites in developed areas, especially development comprising infill or backland development.

Objective UO12 of the Plan states that it is an objective to undertake an urban Infill Strategic Plan over the lifetime of the development plan. This has not been undertaken to date.

Objective UO13 of the Plan states that it is an objective to prepare development and design briefs for infill sites.

8.2 Residential Density - Guidelines for Planning Authorities, 1999

The Guidelines seek to encourage increased densities in certain areas including brownfield sites, town and city centre locations through a more economic use of existing infrastructure and serviced land; better access to existing services and facilities; and more sustainable commuting patterns.

8.3 Quality Housing for Sustainable Communities, 2007.

The Guidelines aim to identify principles and criteria that are important in the design of housing and to highlight specific design features, requirements and standards that have been found, from experience, to be of relevance. The Guidelines reflect Government policy on architecture, urban design principles and Department of Finance requirements.

8.4 *Design Standards for New Apartments: Guidelines for Planning Authorities, DoEHLG, 2007.*

The Guidelines aim to promote sustainable urban housing by ensuring that the design and layout of new apartments provide satisfactory accommodation for a variety of household types and sizes. The Guidelines recommend minimum standards for floor areas, storage spaces, balcony size and room dimensions.

8.5 *Sustainable Residential Development in Urban Areas, DoEHLG, December, 2008.*

The guidelines effectively replace the Residential Density Guidelines of 1999 and have been revised to reflect a range of urban area types and sizes and to promote the achievement of a cohesive sustainable approach to development that seeks to integrate schools, community facilities, employment, transportation and amenities with the housing development process.

These Guidelines are accompanied by an *Urban Design Manual* that sets out a number of criteria to cover the main design considerations relevant to residential development. Of relevance to the specific context of the current appeal, these criteria include Context (Criteria 1), Connections (Criteria 2), Privacy and Amenity (Criteria 10), Parking, (Criteria 11) and Detailed Design (Criteria 12).

9.0 Assessment

9.0.1 In my opinion the following are the principle issues of relevance to the determination of the subject appeal:

- Principle of Development
- Design and Visual Impact,
- Impact on Residential Amenity,
- Access and Traffic,
- Other Issues.

9.0.2 In undertaking this assessment it is proposed to consider the proposed development de novo and to take the proposed development as being that which was determined by the Planning Authority following amendments on foot of FI and Clarification requests, namely for a total of 82 no. residential units and with Block E at the eastern end of the site at 8 storeys in height.

9.1 Principle of Development

9.1.1 Firstly with regard to the principle of development, as noted by the first party, the entirety of the appeal site is zoned Objective RS (residential) and the proposed land uses of residential and crèche are identified in the development plan as being permitted uses on lands zoned Objective RS. The appeal site does not include any of the lands to the east that are zoned for general industrial use and

overall, the principle of development of the appeal site for the uses proposed is, in my opinion, acceptable.

- 9.1.2 In addition, as cited by the first party in their application documentation and appeal response submission, the approach to development proposed is in compliance with the basic principles of densification, intensification and the optimum use of serviced lands within established areas which is set out in a range of national and local policy documents, such as the *Residential Density Guidelines* and now superseded by the *Sustainable Residential Development in Urban Areas Guidelines* and the policies of Fingal County Council as set out in the *Fingal County Development Plan, 2005-2011*. Note must also be taken however of the clear caveats to the pursuit of this basic objective, particularly with regard to the integration with established surrounding development and the protection of residential amenity.
- 9.1.3 In the current case therefore, while the first party is correct to state that there is a basic policy rationale for the maximisation of development potential of sites such as the appeal site which are well located with regard to existing physical and social infrastructure, including notably the rail line and the amenities of the coast, such development has to be within parameters that protect established residential amenity and character and this will be assessed in more detail in the following sections.
- 9.1.4 It is also noted that Fingal County Council considered the appeal site to constitute a brownfield site and assessed its compliance with the provisions of the Residential Density Guidelines in this context. It is stated in the Planners Report that the designation of the site as a brownfield site does *...allow for a higher density than what might otherwise be expected in the area*. While this is acknowledged as being policy and I would agree that the appeal site does constitute a brownfield site within the meaning of the Density Guidelines, it is nevertheless clear, in my opinion that such a potential for increased density is contingent on the impact on residential amenity and the character of the area being acceptable.
- 9.1.5 A number of issues of **legal interest and validity** have been raised by parties to the appeal. With regard to the issue of a right of way through the site and the maintenance of such a right of way, it would appear that the existing wayleave for pedestrian traffic and connections through to Binn Eadair Crescent to the south and Station Road (via the pumping station site) are to be retained as part of the proposed development and that the concerns raised by the third parties in this regard are not outstanding. In any event the details with regard to the establishment of this right of way, particularly given that it is stated to have been relocated within the site in the past is essentially a matter between the parties to the appeal and not one which can be determined by the Board.
- 9.1.6 The third parties have also questioned in some way the **northern boundary** and the consent of the applicant to the making of the application in this area. On the basis of an inspection of the site and the submitted plans I do not see that there is an issue apparent in this regard and again such matters would appear to be such that they would have to be resolved between the parties concerned. It is also noted in this regard that there is a submission from Iarnrod Eireann to the

Planning Authority on file in which no specific issue with regard to the boundary is raised.

9.2 Design, Scale and Visual Impact,

- 9.2.1 In their justification of the scale of development proposed, the first party has made a number of contentions which are, in my opinion difficult to reconcile with the existing situation on the ground.
- 9.2.2 Firstly, it has been stated that the scale of development proposed reflects the nature of the site which traditionally accommodated large buildings and that *'the quantum of development is in keeping with the height of the existing warehousing but with a lower plot ratio'*. The scale of the existing buildings on the appeal site, specifically the main shed / warehouse buildings are essentially large two storey in scale, having a general ridge height of c.10-11 metres. In contrast to this the height of Block E is proposed to be 24.75 metres and that of Block C close to 16 metres. The scale of development proposed is therefore, in my opinion significantly greater than that which is existing on site or which was previously on site.
- 9.2.3 The first party also contends that the development reflects the character of the site and environs which contains large industrial buildings and an adjoining 16 metre high pumping station, telecommunications masts and previously contained a 36 metre chimney. It is therefore concluded that *'as a result this location is ideally suited for taller development'*.
- 9.2.4 Having regard to the single and two storey nature of surrounding residential development and to the existing scale of buildings on the site as outlined above, I would not agree that the scale of development proposed reflects the character of the site and environs to the extent suggested by the first party. In addition, the adjoining structures referred to namely the antennae and pumping station to the east of the site are very different in character and visual impact to the residential development proposed as part of the development. Similarly, references to the former chimney on site are not, in my opinion directly relevant to an assessment of appropriate heights given the time since this structure was removed from the site and the very different character of the structure relative to what is now proposed.
- 9.2.5 At a wider scale, the general environs of the site are relatively low scale residential development punctuated with the occasional taller structure although not generally at a scale comparable to that proposed in the current application. The applicant has submitted a number of montages/views of the proposed development from a number of locations in the environs of the site. In terms of the impact for areas in close proximity to the site, the development, in particular Block E is clearly visible from a number of locations in the immediate environs of the site, notably from Railway Avenue / Baldoyle Road junction, from the Dublin Road at the junction with Binn Eadair development and from locations to the east on Station Road. It is also noted that these montages/views do not give the views from the most proximate residential areas, namely Binn Eadair View / The Crescent to the south and within James McCormack Gardens to the north. Given

the proximity of these locations to the appeal site and the relative differential in scale between the proposed development and existing buildings in the vicinity it is to be anticipated that the impact in terms of visual intrusion if not overlooking would be substantial and would have a potentially significant negative impact on the residential amenity and character of these most proximate locations in particular.

- 9.2.6 With regard to longer range visual impacts, the location of the appeal site close to Sutton Cross and at a narrow point of land serves to increase the visual envelope within which the site would be visible. No views are indicated of the potential longer range views from along the Dublin / Howth Road to the west, however views from the west in the R106 (Coast Road / Strand Road) area (Views Nos. 7 and 10) show how the development would appear relative to the Hill of Howth beyond.
- 9.2.7 Overall, with regard to height, it is my opinion that the scale of development as submitted to the planning Authority is excessive in terms of its potential to have a negative impact on the existing low lying area in the vicinity, that it would constitute a visually prominent feature in the existing landscape that would potentially take from views of Howth head and that contrary to the assertions of the first party there is no established context for buildings of the scale proposed having regard to existing or previous surrounding development and structures.
- 9.2.8 In particular, I would have concerns with regard to the potential impact of the proposed development on the character of the residential areas most proximate to the appeal site, in particular the Crescent, the northern end of Binn Eadair View and the eastern end of James McCormack Gardens. The scale of development as submitted would, in my opinion, be overbearing and seriously injurious to the character and residential amenities of these areas and the scale of development, specifically Blocks C and E is excessive. As a minimum, it is my opinion that the scale of development is required to be reduced in a manner similar to that required by Condition No.2 attached to the Notification of Decision issued by the Planning Authority which required that the overall height of Block E would be reduced by 2 storeys from 8 to 6. A reduction in scale of Block E from 8 storeys to a maximum of 6 would, with the bulk of the block being 4 rather than 5 storeys would, in my opinion mitigate the main potential negative medium to long range visual impacts. With these design amendments, the separation distances between Block E and the existing residential properties to the north and south would be such that the degree of visual intrusion and overbearing would not, in my opinion, be excessive.
- 9.2.9 With regard to Block C, during the course of the assessment of the application by the PA the applicant has undertaken a number of design amendments to the building line and elevational treatment to satisfy the requirements of the PA that the set back from the dwellings to the south would be a minimum of 30 metres for levels up to three storeys and 35 metres above this. Notwithstanding these design amendments, I would have concerns with regard to the proximity of this large 4 / 5 storey block to the dwellings to the south at the western end of Binn Eadair Crescent. Given the bulk and proximity of Block C to the rear of dwellings on Binn Eadair Crescent I consider that there is the potential for significant loss of existing residential amenity due to overbearing visual impact. As outlined in the

sections below I would also have concerns regarding the overlooking of dwellings to the south from Block C arising from the proximity of balconies / terraces (particularly at third floor level / fourth floor above ground) and bedroom windows in Block C. In order to address these issues Block C requires to be reduced in scale by one floor (to three storeys with a set back fourth floor level) and redesigned to reduce potential overlooking. The reduction in scale to 3/4 storeys would also have the result of mitigating the visual impact of the block when viewed from Binn Eadair and James McCormack Gardens which, on the basis of the submitted photo montages, is significant with the current layout.

9.3 Impact on Residential Amenity,

- 9.3.1 In addition to the perception of overbearing that the proposed development generates there are issues of potential overlooking and overshadowing that have been raised by parties to the appeal.
- 9.3.2 With regard to **overshadowing**, the applicant has submitted shadow projection diagrams as part of their submission to the Planning Authority. On the basis of the information presented in these submissions it would appear that the impact of the proposed development in terms of additional shadowing would not be very significant and that the separation distance of the appeal site from the properties to the north and the extent of separation resulting from the presence of the railway line is such that there would not be a significant increase in residential disamenity due to overshadowing. The potential impact would certainly not appear to be such that significant portions of the generally long gardens or the rear of the dwellings themselves located to the north, north west and north east would be negatively impacted.
- 9.3.3 In view of this, I would agree with the contention of the first party that what this analysis indicates is that there will be some impact on the existing residential properties located to the west, north and north east of the appeal site but that the additional impact over an above the existing situation arising from the existing structures on site is not significant.
- 9.3.4 In terms of **overlooking**, the primary impact is, in my opinion, on the properties to the south of the appeal site given the fact that the main living areas and amenity spaces (balconies) are generally located on the south facing elevations of the proposed buildings and that the separation distances to adjoining residential properties are generally less to the south.
- 9.3.5 As noted by the first party, the Sustainable Residential Development in Urban Areas Guidelines is not definitive with regard to the appropriate separation distance between existing housing and larger scale infill development. Rather what is stated in Paragraph 5.7 is that *'where such (brownfield) significant sites exist and, in particular, are close to existing or future public transport corridors, the opportunity for redevelopment to higher densities, subject to the safeguards expressed above or in accordance with local area plans should be promoted.'* These safeguards referred to are set out in paragraph 5.6 and include compliance with relevant public and private open space standards and

'avoidance of undue adverse impact on the amenities of existing or future adjoining neighbours'.

- 9.3.6 Similarly, the accompanying Urban Design Manual does not give a lot of specific guidance with regard to appropriate separation distances and overlooking other than promoting the principle of flexibility with regard to design and the use of innovative solutions to reduce or eliminate the potential for overlooking.
- 9.3.7 The Planning Authority in their FI request specified a separation distance of 30 / 35 metres for Block C which would be consistent with the guideline distance specified in Paragraph 5.6.1 of the *Residential Density Guidelines, 1999* which have been superseded by the Sustainable Residential Development Guidelines since the assessment of the application by the PA.
- 9.3.8 The two elements of the development of most concern with regard to potential overlooking are, in my opinion Blocks C and E. In the case of Block E, the reduction in the scale of development to a maximum of 6 no storeys at the eastern end with the bulk of the Block being 4 storeys would, in my opinion combine with the separation distances to the dwellings to the south of 48 to 52 metres and the design amendments proposed by the applicant in response to the further information request of the Council to result in a development that would not have an excessively negative impact on residential amenity.
- 9.3.9 In the case of Block C, as outlined in 9.2.9 above, I would have significant concerns with regard to the potential impact of this block on the residential amenity of the dwellings in the western end of Binn Eadair Crescent. Specifically, it is noted that while the building line above third floor level is set back by 35 metres from the dwellings to the south, there are large roof terraces serving units at this level (third floor / fourth floor above ground level) which are located closer to 30 metres. In addition, the western end of the block up to third floor (fourth floor above ground) is located within c.24 metres of the closest dwelling and contains south facing bedroom windows. Overall therefore, it is my opinion that the scale and design of Block C is such that notwithstanding the amendments proposed by the applicant to the PA, it would have a potentially significant negative impact on the residential amenity of dwellings to the south in Binn Eadair Crescent due to overlooking and visual prominence. In my opinion, in order to satisfactorily address these issues Block C needs to be reduced in scale to 3 / 4 storeys above ground level and to be redesigned such that the potential for overlooking from bedroom windows and balconies at upper levels is minimised.

9.4 Access and Traffic,

- 9.4.1 There are, in my opinion, a number of areas of concerns /potential issues with regard to access and traffic. Firstly, with regard to the principle of access via Railway Avenue and the potential for alternative access points, I would note that irrespective of the historical access routes to the site about which there appears to be some contradiction between the parties to the appeal, Railway Avenue would appear to me to be the only feasible vehicular access route into the appeal site. As stated by the first party, access via the Binn Eadair estate to the south

would not be acceptable to the residents of that development which is a cul de sac and would be very unlikely to be acceptable to the Planning Authority.

- 9.4.3 The appellants have presented comprehensive information to suggest that the traditional access to the site for industrial related traffic was via Station Road to the east of the site. Against this, the first party has claimed that Railway Avenue was used for commercial / industrial traffic up to the closure of the operation on the appeal site c.10-12 years ago. It would appear, however, that such use was limited in extent and that the traditional access route was indeed via Station Road. The construction of the sewage pumping station on lands to the east has effectively severed the appeal site from Station Road and while access may theoretically be feasible via the pumping station site, this would be restricted in width and would be subject to significant problems regarding safety and consent. The provision of access via this route would also have implications for car parking on the pumping station lands which is currently used as overflow parking for the adjacent Sutton DART station. It is noted in this regard that the first party states that Dublin City Council as owners of the pumping station site was approached regarding the possibility of access and that this request was not viewed favourably. In view of this I would not agree with the third party submissions regarding the potential for access via Station Road and consider that the proposed development and the grounds of appeal have to be assessed on the basis of access via Railway Avenue.
- 9.4.4 There is also significant disagreement between the parties to the appeal with regard to the adequacy of the width of the road to cater for the traffic that would be generated by the proposed development and whether the relevant document is the 'Manual for Streets' or other publications which have more restrictive standards.
- 9.4.5 The Manual for Streets specifies that a 4.8 metre wide carriageway allows for the passing of a car and light commercial vehicle and this is achievable on Railway Avenue in its current configuration. Given the volume of traffic predicted and the cul de sac layout of the street, the 4.8 metre width is in my opinion appropriate to cater for the volume and nature of traffic projected. I would however be concerned with regard to the adequacy of the width of the street as a result of the required provision of on street parking bays. A total of 11 no. bays are indicated which is in my opinion the minimum that is required given that three spaces must be dedicated to the 3 no. dwellings which do not currently have off street parking and that a number of the other dwellings have limited off street parking which could only realistically accommodate a single car. Effectively therefore there are an additional 9 no. on street spaces to accommodate visitor and overspill parking from the 13 no. dwellings on the street.
- 9.4.6 With regard to the clearance at the proposed pinch points / parking bays, it is noted that there would appear to be a number of discrepancies between the width of the existing roadway and the dimensions given in the proposed drawings submitted to the Planning Authority by the first party. Specifically, it is noted that at the location of the first 2 parking bays at the western end of the street the width of the street including existing footpaths is c.9.25 metres while the dimensions shown in the proposed layout (WSP Drg. No.0252-RAI-001) give an overall width of 9.5 metres. In this location, the discrepancy of c0.25 metre could be

accommodated by a reduction in the width of the footpath along the northern side of the road to c.1.85 metres.

- 9.4.7 Further to the east, in the vicinity of the parking bay located between the last pair of houses facing each other at the eastern end of the street, the overall width of the street was recorded as being c.8.75 metres while that indicated on the submitted plans (WSP Drg. No.0252-RAI-001) gives an overall width of 9.3 metres at this point, c. 0.55 metre less. The accommodation of a parking bay on this section of the street (the eastern end) would therefore appear to necessitate a reduction in the carriageway width to c.3.15 metres maximum with minimum footpaths of 1.8 metres on each side of the street. Overall, the impact of these discrepancies is not material if pinch points with a single carriageway is to be used in these locations.
- 9.4.8 The first party justifies the provision of pinch points on the street as being in accordance with Manual for Streets which it is quoted at stating that *'in lightly trafficked streets, carriageways may be narrowed over short lengths to a single lane as a traffic calming feature'*. Given the number of residential units proposed and the provision of a crèche to accommodate 74 no. children in addition to the existing traffic on the street I am not convinced that the nature of Railway Avenue on completion of the proposed development would be lightly trafficked. The number and extent of the narrowed sections is also in my opinion significant and in the proposed layout results in the creation of 4 main pinch points which account for c.110 metres of roadway of c.40 percent of the section of the street where width is limited.
- 9.4.9 With specific regard to the crèche element, the first party as part of their FI response to the Planning Authority detailed TRICS results for a crèche of the scale proposed. These results indicated a peak hour arrival rate of 0.255 trips per child and a departure rate of 0.2 car trips per child. These levels equate to c.19 trips per hour in the AM peak hour and c.15 in the PM peak. It is noted that these figures do not explicitly take account of staff trips or parking demand. It is also noted that the TRICS assessment has a high number of surveys that relate to developments on the edge of town centres or in neighbourhood centres. Contrary to the assertions of the first party in their FI response submission I would not agree that this means that the TRICS assessment likely overstates the number of trips generated. On the contrary, notwithstanding the proximity to DART, the location of the appeal site in a relatively low density outer suburban location would, in my opinion likely generate higher number of car trips than that indicated.
- 9.4.10 With regard to the level of parking proposed within the development, the development plan standard is between 1 and 2 spaces per residential unit. Particularly in view of the likely reduction in the overall number of units from the 82 originally proposed to c. 75 no. with the reduction in height of Block E and to c.62 with the reduction of a floor from Blocks C and E it is considered that the proposed allocation of 133 no. spaces is adequate to cater for residential parking. Visitor parking and set down and staff parking to serve the crèche both remain relevant issues. For the crèche a total of 5 no. spaces are proposed at the eastern end of Railway Avenue. The development plan does not give a figure with regard to the parking requirement for crèche facilities, however based on the

projected figure of 19 no. car trips generated by the crèche in the AM peak and an average set down time of 10 minutes this is stated by the applicant to be acceptable. As stated previously I am not convinced that 19 no. AM peak hour car trips would be the limit of traffic generated by this element of the development and the assessment would also appear not to take into account employee trips and no designated parking area / spaces are specifically identified for these employees.

- 9.4.11 The impact of the proposed development on the junction between Railway Avenue and Kilbarrack Road was detailed in a Traffic Assessment submitted by the applicants at the time the application was submitted to the Planning Authority. The details of this assessment are not available on file and have not been provided by the Planning Authority.
- 9.4.12 From the information on file it would appear that the assessment undertaken indicated that the junction would operate within capacity at peak periods however the exact methodology of the assessment undertaken is not clear. In particular it is noted that the third party appellants have questioned was the crèche traffic included into the junction calculations on top of residential trip generation and attraction rates. The information to confirm or reject this assertion is not available on the appeal file.
- 9.4.13 The traffic assessment is stated by the first party to indicate that no vehicles turned right when exiting Railway Avenue at the peak hour so the impact of queuing at the junction as a result of the railway crossing is not considered to be significant. The results of this traffic survey is recognised however in the event that the assessment did not account for crèche generated traffic (including staff) this result may be questionable. It is also questionable to what extent the very low proportion of traffic projected to turn right and cross the railway line is influenced by existing traffic conditions and queuing at the level crossing.
- 9.4.14 In conclusion, in view of the volume of traffic generated by the residential and crèche components of the proposed development on top of existing residential traffic and parking demand, the number and extent of the on street parking bays on Railway Avenue and the restricted parking for staff and visitors to the crèche use, I would have serious reservations regarding the adequacy of the layout of the eastern end of Railway Avenue and the approaches to cater for the volumes of traffic likely to be generated by the development. In particular given that the proposed crèche is to accommodate up to 74 no. children and likely to have c.9-10 no. staff and given the concentrated hours during which such facilities are accessed in both the morning and evening periods I would question the adequacy of the parking provision for the staff and parents attending the crèche. I would also question the ability of Railway Avenue both in the immediate vicinity of the crèche building and along its length to accommodate the volume and concentration of traffic generated by the crèche facility without leading to the creation of serious congestion and unauthorised parking. In view of these issues, as a minimum it is recommended that in the event that permission was being considered that the crèche element of the development would be significantly reduced in scale or preferably omitted entirely. Overall, taken in its current configuration, I would not agree with the first party and the Planning Authority that the development is acceptable in traffic safety and accessibility terms.

9.4.15 The location of the appeal site proximate to a rail corridor and Sutton DART station is a benefit and justifies a sustainable approach to development and the accommodation of increased densities where appropriate. Such increases in density must however be subject to the proviso that residential amenity is not excessively negatively impacted and that the existing access routes to the site are capable of accommodating the volumes of traffic likely to be generated. The contention of the first party that the appeal site is located in a built up area and that there is therefore no planning basis to restrict development in principle for traffic reasons is not, in my opinion a reasonable statement and while traffic volumes on the wider network are not a strong basis for refusal of permission the potential issues in the immediate vicinity of the site are considered to be grounds for concern in the current layout. Specifically, the potential impacts of restricted crèche and visitor parking, restricted access for crèche traffic and manoeuvring of this traffic in the vicinity of the crèche and the access along the reconfigured Railway Avenue at the junction with Kilbarrack Road would in my opinion combine to make the overall access arrangements in the vicinity of the site liable to significant congestion with resulting disamenity for existing and future residents of the area.

9.5 Other Issues.

9.5.1 The retention of the tank house building on site is supported in principle and the incorporation of this structure, albeit in a significantly modified form into the development is, in my opinion appropriate and acceptable.

9.6 Conclusion

9.6.1 In the interests of protection of the residential amenity of existing residential properties to the south it is my opinion that a number of significant amendments to the proposed development are required to be undertaken. Specifically, in the case of Block E, a reduction of the maximum height to 6 storeys and a recommended reduction of the bulk of the block to a maximum of four storeys above ground level. Taken in conjunction with the design amendments proposed by the first party and the separation distances to surrounding properties, it is my opinion that the development of Block E in this format would not have a significant adverse impact on visual or residential amenities.

9.6.2 Block C is of concern in terms of its height, bulk and proximity to the dwellings to the south in Binn Eadair Crescent. A reduction in scale of this block to part 3 and part 4 storey above ground level is, in my opinion required given its proximity to existing dwellings. In its current layout, I would also have significant concerns with regard to overlooking from this block of the dwellings in Binn Eadair Crescent.

9.6.3 The traffic situation is considered to be problematic particularly having regard to the accommodation of crèche generated traffic and parking demand and given the restricted access to the site via Railway Avenue and potential issues at the junction with Kilbarrack Road. The provision of a crèche facility of the scale

proposed is not considered to be feasible from a traffic congestion and access perspective and requires to be significantly scaled back or omitted entirely.

- 9.6.4 Overall, the nature of the outstanding issues and the scale of amendments required are such that it is not, in my opinion appropriate that permission be granted subject to design amendments by way of condition. In reaching this conclusion, I have also had regard to the proposed development of the adjoining site to the east which is the subject of a concurrent appeal to the Board and where issues of scale, bulk, access and open space provision arise that are, in my opinion best addressed in the context of a co-ordinated application for the two sites.

10.0 Recommendation

In view of the above, it is recommended that permission be Refused for the Reasons and Considerations set out below:

Reasons and Considerations:

1. Having regard to the design and scale of development proposed, its proximity to site boundaries and to existing residential development, particularly Blocks C and E it is considered that the proposed development would give rise to a significant loss of residential amenity for properties in the vicinity of the appeal site by virtue of overbearing visual impact, visual prominence and potential overlooking. The proposed development would therefore seriously injure the amenities and depreciate the value of properties in the vicinity and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the nature and scale of the proposed development in particular the proposed crèche element, the restricted width of the proposed access route via Railway Avenue and extent of circulation space at the eastern end of Railway Avenue and the extent of the works to Railway Avenue in terms of the further restriction of the carriageway width and provision of on street parking, together with the restricted on street parking proposed to serve the proposed crèche use and existing residents, the Board is not satisfied that the proposed development would not lead to the creation of significant traffic congestion and obstruction of road users on Railway Avenue and in the vicinity of the appeal site at peak periods. The proposed development is therefore considered to be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Inspectorate.
27th May, 2009